

**Before the  
FEDERAL TRADE COMMISSION  
Washington, D.C. 20580**

*In the Matter of*

**Children's Online Privacy Protection Rule Amendment  
Sliding Scale 2005, Project No. P054503**

**COMMENTS OF  
THE UNITED STATES INTERNET SERVICE PROVIDER ASSOCIATION**

The U. S. Internet Service Provider Association (US ISPA) is a national trade association that represents the common policy and legal concerns of the major Internet service providers (ISPs) and network providers.<sup>1</sup>

**I. Introduction**

US ISPA hereby submits these comments in support of the Federal Trade Commission's proposal to amend the Children's Online Privacy Protection Rule (COPPA Rule) to permanently allow website operators and ISPs to obtain verifiable parental consent for the collection of personal information from children for internal use through sending an email message to parents coupled with additional steps.<sup>2</sup> As the Commission recognized in its COPPA Rule Amendment Notice of Proposed Rulemaking (NPRM),<sup>3</sup> making the sliding scale permanent is the best available option for continuing to protect children's privacy because new technological methods for verifying parental consent have not become widely available. Further, US ISPA member companies have found that the sliding scale mechanism currently in place has adequately served websites and ISPs in complying with the COPPA Rule.

Among other things, the COPPA Rule requires ISPs and websites to obtain prior verifiable parental consent before collecting (with certain limited exceptions), using, or disclosing the personally identifiable information of children under the age of 13. In issuing the final COPPA Rule in 1999, the Commission weighed which methods would best provide the "verifiable" parental consent required under COPPA. The Commission considered (1) whether consent methods would ensure that it is in fact the parent providing the consent; and (2) whether the method is a "reasonable effort," taking into consideration available technology. After weighing these considerations, the Commission established a sliding scale under which "more reliable methods of consent will be required for activities involving chat rooms, message boards,

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<sup>1</sup> The US ISPA member companies are AOL, BellSouth, EarthLink, MCI, SAVVIS, SBC, Verizon, and United Online.

<sup>2</sup> Children's Online Privacy Protection Rule, Final Rule, 16 C.F.R. § 312.5; *see also* 64 Fed. Reg. 59888, 59902 (Nov. 3, 1999) (Preamble to Final Rule) ("*COPPA Rule*").

<sup>3</sup> *In the Matter of Children's Online Privacy Protection Rule, Sliding Scale 2005, Project No. P054503*, Notice of Proposed Rulemaking, 70 Fed. Reg. 2580 (Jan. 14, 2005) ("*NPRM*").

disclosures to third parties,” and certain other disclosures.<sup>4</sup> Such parental consent methods include the use of print-and-send forms, credit cards, toll-free numbers, and digital signatures. ISPs and websites could use email plus additional steps in order to obtain parental consent for the collection of children’s information for internal use.

At the time the Commission adopted its final COPPA Rule in 1999, it found that its sliding-scale approach would only be necessary “in the short term, and that, with advances in technology, companies will soon be able to use more reliable verifiable electronic methods in all of their transactions.”<sup>5</sup> The sliding scale was therefore set to expire in April 2002. But when it came time for the sliding scale to expire, the Commission found that newer, more cost-effective, and more reliable methods of obtaining verifiable parental consent were not available. In extending the sliding scale until 2005, the Commission noted that “secure electronic mechanisms and/or infomediary services for obtaining verifiable parents consent are not yet widely available at reasonable cost.”<sup>6</sup>

Now, three years after the Commission’s decision to extend the sliding scale on the basis of a lack of other available, reliable methods for obtaining parental consent, US ISPA agrees with the Commission’s conclusion that such methods still are not widely available on a cost-effective basis. As the Commission observes in its NPRM, “[a]t the present time . . . as in 2002, it appears that the expected progress in available technology has not occurred.”<sup>7</sup> Accordingly, US ISPA supports the Commission’s tentative conclusion to make the sliding scale mechanism permanent.

## **II. New Technological Solutions to Replace Sliding Scale Are Not Widely Available**

The Commission has correctly recognized that widely available, cost-effective technology-based methods of obtaining verifiable parental consent simply have not become available. In fact, numerous companies (including, for example, Digital Signature Trust, Identrus, and the American Bankers Association TrustID project) have tried to develop widely available verification technologies, but their efforts have not resulted in widespread issuance of individual identity certifications. As another example, the Liberty Alliance<sup>8</sup> – an alliance of more than 150 companies, non-profit and government organizations – has worked to develop an identity standard. But the projects this group has accomplished have been almost entirely devoted to authentication services for commercial platforms. None of the projects are consumer identity verification and authentication projects that would serve to provide verifiable parental consent as required under the COPPA Rule. And while entities like the Liberty Alliance are

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<sup>4</sup> *COPPA Rule* at 59902 (Preamble to Final Rule).

<sup>5</sup> *Id.*

<sup>6</sup> Children’s Online Privacy Protection Rule, Final Rule Amendment, 67 Fed. Reg. 18818, 18819 (April 17, 2002).

<sup>7</sup> *NPRM* at 2581.

<sup>8</sup> See <http://www.projectliberty.org> (last visited Feb. 10, 2005).

working to come up with standards that could be widely implemented for consumer use, our understanding is that such groups are still a long way from establishing a commercially viable model for trusted identity services.

Widespread public key infrastructure (PKI) solutions have not developed for two chief reasons. First, it is difficult to develop a legal regime because there is no easily identifiable certification authority that will take on the liability for verifying identities in an open, public system, particularly for applications like age verification that have limited commercial purposes (other than legal/regulatory compliance). Second, reliable solutions are difficult to achieve, particularly because certification standards are insufficiently developed and precise to assure reliable interoperability of the various subtly different implementations of a given standard (*e.g.*, X.509 v3) that inevitably appear in the open Internet environment. ISPs are understandably reluctant to deploy unreliable age verification solutions, which can interfere with the user experience and may provide insufficient guarantees of compliance.

Given these obstacles and the fact that numerous groups and companies have not achieved success thus far in developing cost-effective authentication technologies for widespread public use, it is unlikely that any such reliable authentication technology will become widely available for consumer use in the near future. Accordingly, in the absence of such secure electronic mechanisms for facilitating parental consent at a reasonable cost, the Commission should make permanent its sliding scale mechanism for obtaining verifiable parental consent under the COPPA Rule.

### **III. Sliding Scale Adequately Protects Interests of Children**

The US ISPA member companies submit that the sliding scale mechanism has proven to be an effective means of protecting children's privacy. Further, the sliding scale appropriately establishes a burden of obtaining verifiable consent that is commensurate with the risk of harm to a child's privacy if the information is collected without parental consent. For example, the sliding scale requires ISPs and websites to be more proactive about protecting children's information in situations that may pose the most risk to children's privacy if the information were collected, used, or disclosed without parental knowledge and approval (*e.g.*, for chat rooms, message boards, disclosures to third parties).<sup>9</sup>

In its NPRM, the Commission asks whether eliminating the sliding scale would encourage website operators to collect children's personal information for uses other than internal uses because the cost of obtaining parental consent for internal uses would be just as expensive as methods of obtaining consent for external uses. US ISPA does not believe that this result would occur. In fact, for many US ISPA member companies, the opposite result has been true; several companies have adopted more stringent forms of obtaining verifiable parental consent even though they do not disclose children's personal information to any third parties. While not all member companies collect personal information from children under the age of 13 – several companies do not allow individuals under the age of 18 to become subscribers – those

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<sup>9</sup> *COPPA Rule* at 59902 (Preamble to Final Rule).

that do collect children's information have not found complying with the sliding scale mechanism to be overly burdensome or costly.

#### **IV. Conclusion**

In the face of evidence that advanced, cost-effective verification technologies are not widely available and that children's online privacy is sufficiently protected through the use of the sliding scale parental consent mechanism, US ISPA submits that there is no sound reason for abolishing the sliding scale in favor of finding another parental consent mechanism. For the foregoing reasons, therefore, US ISPA supports the Commission's proposal to make the sliding scale permanent.

Respectfully submitted,



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